

**United States Department of Labor
Employees' Compensation Appeals Board**

R.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Alton, IL, Employer**

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**Docket No. 18-0860
Issued: December 4, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 14, 2018 appellant filed a timely appeal from a December 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish lumbar conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 7, 2017 appellant, then a 52-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed lumbar spinal stenosis and herniated discs as a result of carrying a heavy bag on his shoulder and walking approximately 15 miles per day.

¹ 5 U.S.C. § 8101 *et seq.*

He noted that he first became aware of his claimed conditions on March 6, 2013, but did not realize their connection to his federal employment until July 7, 2017. Appellant did not indicate that he had stopped work.

In a report dated July 5, 2017, Dr. Michael F. Williams Jr., a chiropractor, related appellant's medical and employment history. Based on examination findings, he diagnosed lumbar intervertebral disc disorders with myelopathy, and segmental and somatic dysfunction of the lumbar, thoracic, and sacral regions. Dr. Williams opined that appellant's work duties exacerbated and aggravated his conditions and he was unable to return to work until July 15, 2017.

In a July 10, 2017 progress note, Dr. Williams diagnosed nerve compression as the result of lumbar herniated discs, complicated by his lumbar stenosis.

By development letter dated August 16, 2017, OWCP informed appellant that the evidence received was insufficient and advised him of the type of evidence needed to establish the factual and medical elements of his claim. It noted that medical evidence must be submitted by a qualified physician and it advised appellant of the circumstances under which a chiropractor could be considered a physician under FECA. OWCP requested that he provide a medical report from his physician which contained an opinion, supported by a medical explanation, as to how specific work activities caused, contributed to, or aggravated his medical condition. It afforded appellant 30 days to submit the requested evidence.

OWCP thereafter received a March 6, 2013 magnetic resonance imaging (MRI) scan of appellant's lower back which diagnosed lumbar spinal stenosis, L5-S1 disc herniation, and small annular L4-5 disc tear.

In a May 30, 2017 report, Dr. John L. Palcheff, an osteopath Board-certified in family medicine, diagnosed bulging lumbar discs, arthralgia in multiple sites, myalgia, myositis, sacroiliitis, segmental and somatic dysfunction of the lumbar and sacroiliac regions, and sacrum somatic dysfunction.

A June 16, 2017 MRI scan revealed an old L1 compression fracture with no new fracture or subluxation seen, mild-to-moderate lumbar disc bulges, moderate-to-severe lumbar facet hypertrophy, moderate-to-severe L1-5 bilateral neural foraminal stenoses, severe L5-S1 bilateral neural foraminal stenosis, and mild-to-moderate lumbar central canal stenosis.

Dr. Williams provided an addendum to his July 5, 2017 report in which he opined that appellant's work duties of bending, ascending stairs, getting into and out of a motor vehicle, walking long distances, and carrying heavy weight aggravated his spinal stenosis and bulging disc symptoms.

Dr. Palcheff diagnosed arthralgia, chronic low back pain, and lumbar spinal stenosis in a July 6, 2017 report.

In notes dated June 30 and July 14, 2017, Dr. Williams diagnosed nerve compression as the result of appellant's herniated lumbar discs, complicated by his lumbar stenosis. He also opined that this condition was aggravated by appellant's bilateral foot condition.

By decision dated September 14, 2017, OWCP denied appellant's claim. It determined that, although he established that the employment factors occurred and that a medical condition had been diagnosed, the medical evidence submitted failed to demonstrate that the medical condition was causally related to the established employment factors. OWCP found that the reports from Dr. Palcheff were insufficient to establish his claim as he offered no opinion as to the cause of the diagnosed conditions. It also found that Dr. Williams was not considered a physician under FECA as he was a chiropractor who had not diagnosed a subluxation based on x-ray evidence.

On September 29, 2017 appellant requested reconsideration and submitted a September 29, 2017 report from Dr. Palcheff in support of his request.

Dr. Palcheff, in his September 29, 2017 report, diagnosed appellant's condition as radiculopathy/neuralgia (nerve compression) from the lower back to the left leg, lumbar herniated discs, and lumbar spinal stenosis. Based on a review of appellant's July 7, 2017 statement describing his work duties, Dr. Palcheff concluded that appellant's employment duties could have aggravated his back problems.

By decision dated December 29, 2017, OWCP denied modification of its prior decision. It found Dr. Palcheff's opinion was insufficient to establish appellant's claim as it was speculative, lacked a history of injury, and failed to identify specific work factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."⁵ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

² *Id.*

³ See *E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁴ See *P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ 20 C.F.R. § 10.5(ee).

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁷ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish lumbar conditions causally related to the accepted factors of his federal employment.

Appellant submitted reports from Dr. Williams diagnosing lumbar intervertebral disc disorders with myelopathy, and segmental and somatic dysfunction of the lumbar, thoracic, and sacral regions, which he attributed to appellant's employment duties. The Board finds that the reports of Dr. Williams, a chiropractor, cannot be considered medical evidence under FECA as he did not diagnose a subluxation based upon x-ray evidence. Section 8101(2) of FECA⁹ provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician under FECA and his opinion does not constitute competent medical evidence.¹⁰ As such, the reports from Dr. Williams are of no probative value and, thus, are insufficient to establish causal relationship in this claim.

Appellant also submitted reports dated May 30 and July 6, 2017 from Dr. Palcheff. On May 30, 2017 Dr. Palcheff diagnosed bulging lumbar discs, arthralgia in multiple sites, myalgia and myositis, sacroiliitis and segmental and somatic dysfunction of the lumbar and sacroiliac regions, and sacrum somatic dysfunction while on July 6, 2017 the diagnoses were listed as arthralgia, chronic low back pain, and lumbar spinal stenosis. He offered no opinion as to the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Thus, these reports are insufficient to establish appellant's claim.

In a September 29, 2017 report, Dr. Palcheff diagnosed radiculopathy/neuralgia (nerve compression) from the lower back to the left leg, lumbar herniated discs, and lumbar spinal stenosis. He opined that appellant's employment duties could have aggravated his back problems.

⁶ *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Id.*

⁹ 5 U.S.C. § 8102(2).

¹⁰ 20 C.F.R. § 10.5(bb); *see Mary A. Ceglia*, 55 ECAB 626 (2004).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The Board has held that medical opinions which are speculative or equivocal in nature are of diminished probative value.¹² Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is insufficient to meet appellant's burden of proof.¹³ Dr. Palcheff's report is insufficient to discharge appellant's burden of proof as it does not present a rationalized medical opinion regarding causal relationship.

The record also contains MRI scans dated March 6, 2013 and June 16, 2017. The diagnostic studies of record did not provide a cause of any diagnosed conditions. Diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁴

On appeal appellant asserts that the medical evidence from Dr. Palcheff and Dr. Williams is sufficient to establish his claim. He argues that while the June 16, 2017 MRI scan does not diagnose a subluxation, that a subluxation is present. Appellant further contends that Dr. Williams is entitled to be considered a physician under FECA as he provided evidence of a subluxation. Contrary to appellant's contentions, Dr. Williams did not diagnose a subluxation by x-ray to exist as required by FECA.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish lumbar conditions causally related to the accepted factors of his federal employment.

¹² See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

¹³ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁴ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board